

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STERLING COMMERCIAL CREDIT, L.L.C.,

Plaintiff,

-against-

FEDERAL ELECTRICAL UTILITIES, INC.,
CABLELOT SYSTEM, INC., SHERRI
HOTTON and MARK HOTTEN,

Defendant.
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APPEARANCES:

ROE TAROFF TAITZ & PORTMAN LLP
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Attorneys for Plaintiff
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Bohemia, New York 11716

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WEXLER, District Judge

Plaintiff Sterling Commercial Credit, L.L.C. (the "Plaintiff" or "Sterling") moves this court to re-open this action and enter a judgment against the defendants for the relief sought in Plaintiff's complaint, on the ground that the defendants have defaulted in their obligations under a settlement agreement previously executed by the parties.

MEMORANDUM AND ORDER

CV 10-4004

(Wexler, J.)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

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LONG ISLAND OFFICE

I. Background

Plaintiff initiated this action in September 2010 alleging ten causes of action against defendants Federal Electrical Utilities, Inc. ("Federal"), Cablelot System, Inc. ("Cablelot"), Sherri Hotton and Mark Hotten (collectively the "Defendants"). Plaintiff claims that, amongst other things, Federal and Cablelot breached factoring agreements with the Plaintiff by which the Plaintiff purchased certain accounts receivable. According to the Plaintiff's complaint, the individual defendants provided personal guarantees.

Pursuant to a settlement agreement dated July 29, 2011 (the "Settlement Agreement" or "Agreement"), the parties settled the case, and it was subsequently closed by the court. Plaintiff now brings the instant motion to reopen the case and enter a judgment against the Defendants, alleging that the Defendants have defaulted in their obligations under the Settlement Agreement. Plaintiff argues that under the terms of the Agreement, in the event of a default, the Plaintiff is entitled to enter judgment in the full amount sought in the complaint, and thus seeks a judgment in the amount of \$1,239,517.38 with interest from September 1, 2010, and attorneys' fees in the amount of \$152,664.00, plus costs of this action.

Defendants respond by arguing that much of Plaintiff's basis for the motion -- that Plaintiff was unaware that certain accounts receivable at issue were connected to Defendants' sister company and were the subject of a protracted bankruptcy proceeding -- is not true. Defendants also disagree with Plaintiff's claim that certain satisfactions of liens required by the Settlement Agreement were never provided. Finally, Defendants request that the matter be referred to the Bankruptcy Court, which the Plaintiff opposes, claiming that the Bankruptcy Court has resolved the relevant issues with the relevant parties, and has no role in this dispute.

II. The Motion

The current record before the court is insufficient for the purpose of determining whether the default alleged by the Plaintiff actually occurred. Therefore, the court grants Plaintiff's motion to re-open the case, and denies at this time Plaintiff's motion to enter a default judgment. Counsel for all parties are directed, within two weeks of the date of this Order, to either (1) contact the Magistrate Judge assigned to this matter for the purpose of conducting limited discovery on whether the default occurred, or (2) set a date for the hearing on that issue before this court. In addition, Defendants' motion to compel prior counsel to turn over files, docket entry #48, is also denied without prejudice to renew if necessary before the Magistrate Judge.

SO ORDERED.


LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
August 15, 2012